

**PT 98-83**

**Tax Type: PROPERTY TAX**

**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**SETTLERS' HOUSING SERVICE, INC.,  
APPLICANT**

**v.**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE**

**Docket No: 98-PT-0013**

**Real Estate Exemption**

**For 1995 Tax Year**

**P.I.N. 16-17-302-007**

**Cook County Parcel**

**Robert C. Rymek  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**SYNOPSIS:**

This proceeding raises the issue of whether Cook County Parcel Index Number 16-17-302-007 should be exempt from 1995 real estate taxes under section 15-65 of the Property Tax Code which exempts all property of "institutions of public charity" which is "exclusively used for charitable or beneficent purposes." 35 ILCS 200/15-65 (West 1996).<sup>1</sup>

This controversy arose as follows:

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<sup>1</sup> In People ex rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption necessarily depends on the statutory provisions in force during the time for which the exemption is claimed. This applicant seeks exemption from 1995 real estate taxes. Therefore, the applicable provisions are those found in the Property Tax Code. 35 ILCS 200/15-5 *et seq.* (West 1996).

On January 25, 1996, Settlers' Housing Service, Inc. (hereinafter "SHSI") filed an Application for Property Tax Exemption Complaint with the Cook County Board of (Tax) Appeals. SHSI was seeking exemption for Cook County Parcel Index Numbers 16-17-302-007 and 16-17-302-039. The Board reviewed SHSI's application and on April 29, 1996, recommended that an exemption be granted for Cook County Parcel Index Number 16-17-302-007 (hereinafter the "subject parcel" or "subject property") for December 15, 1995 through December 31, 1995. The Board further recommended that Cook County Parcel Index Number 16-17-302-039 (hereinafter "parcel 039") be exempted for the same two-week time period, except for a portion of parcel 039 which was leased to a Domino's Pizza franchise.

On October 31, 1996, the Illinois Department of Revenue (hereinafter the "Department") adopted the Board's recommendation with regard to parcel 039, but rejected the Board recommendation with regard to the subject parcel, concluding that the subject parcel was not in exempt use. SHSI did not appeal the Department's decision with regard to parcel 039, but did file a timely appeal from the Department's denial of exemption for the subject parcel.

On August 10, 1998, a formal administrative hearing was held at which evidence was presented. Following a careful review of all the evidence it is recommended that the subject property be entirely exempted from 5% of 1995 real estate taxes which represents that period from December 15, 1998 through December 31, 1998.

## **FINDINGS OF FACT**

1. Dept. Gr. Ex. No. 1 establishes the Department's jurisdiction over this matter and its position that the subject parcel was not in exempt use during 1995.
2. The subject property is located at 235 Harrison Street in Oak Park and is improved with a 25 x 115 foot building. Dept. Gr. Ex. No. 1.
3. SHSI acquired the subject property on December 15, 1995, via a warranty deed. App. Ex. No. 1.
4. On that same date, SHSI acquired parcel 039, which is located directly adjacent to the subject property and is divided into two lots: lot 33 and lot 34. Dept. Gr. Ex. No. 1.
5. Lot 33 is rented out to a Domino's Pizza franchise. It is undisputed that lot 33 was properly denied exemption. Dept. Gr. Ex. No. 1; Tr. 10.
6. Lot 34 is improved with a building, which was used by SHSI as office space. The Department exempted Lot 34. Dept. Gr. Ex. No. 1; Tr. p. 9.
7. The subject parcel is immediately adjacent to lot 34. The building on the subject parcel abuts the building on lot 34 and the two buildings are connected via a doorway. Tr. p. 11; Dept. Gr. Ex. 1; App. Gr. Ex. No. 2, Doc. A.
8. SHSI is a not-for-profit organization that provides housing to refugees who come to the United States under political or religious persecution. Tr. p. 7.

9. SHSI is funded by grants from the State of Illinois, DuPage County, and the Village of Oak Park. SHSI also receives donations of building materials from private foundations. Tr. p. 8.
10. From December 15, 1995 through December 31, 1995, the subject property was used by SHSI to store office supplies and various building materials including: insulation, lumber, plumbing supplies. The building materials were to be used to renovate homes for use by its refugee clients. Tr. pp. 11-12; App. Gr. Ex. No. 2.

### **CONCLUSIONS OF LAW**

An examination of the record establishes that this applicant has demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption for the subject property for the period from December 15, 1995 through December 30, 1995. In support thereof, I make the following conclusions:

Article IX, section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). Furthermore, article IX, section 6 does not in and of itself grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the

constitution. Locust Grove Cemetery v. Rose, 16 Ill.2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1<sup>st</sup> Dist. 1983).

Here, SHSI is seeking a property tax exemption under Section 15-65 of the Property Tax Code which states, in relevant part:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to a profit:  
(a) institutions of public charity. 35 ILCS 200/15-65 (West 1996).

Thus, to be entitled to the property tax exemption SHSI must: (1) be an institution of public charity; (2) own the subject property; and (3) use the subject property exclusively<sup>2</sup> for charitable or beneficent purposes.

Here, the Department has implicitly determined that SHSI is an institution of public charity both by granting SHSI an exemption for lot 34 and by denying exemption for the subject property based strictly on a lack of exempt use. Dept. Gr. Ex. No. 1, Doc. C. Moreover, the deed submitted as App. Ex. No. 1 establishes that SHSI acquired ownership of the subject property as of December 15, 1995. Thus, the only real issue is whether the subject property was used for exempt purposes.

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<sup>2</sup> The word “exclusively,” when used in tax exemption statutes means “the primary purpose for which property is used and not any secondary or incidental purpose.” Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1987); Pontiac Lodge No. 294, A.F. & A.M. v. Department of Revenue, 243 Ill. App. 3d 186 (1993).

The Department conclusion that the subject property was not in exempt use was based upon the fact that the applicant initially failed to provide evidence showing that the subject property was being used by SHSI and was not vacant. See Dept. Gr. Ex. No. 1. However, at the hearing the applicant presented substantial evidence that the subject property was not vacant and was in fact being used as a storage area in furtherance of the applicant's charitable purposes and was reasonably necessary in order for SHSI to pursue its exempt purposes. See generally Evangelical Hospitals Corp. v. Department of Revenue, 233 Ill. App. 3d 225 (2<sup>nd</sup> Dist. 1991) (affirming exemption for storage areas). Among this evidence was photographic evidence and testimony establishing that the subject property was being used to store SHSI's office supplies and the building materials used to renovate homes for SHSI's refugee clients. Tr. pp. 11-12; App. Gr. Ex. No. 2, Docs. A-G.

In light of the evidence of exempt use set forth above, I recommend that the subject parcel be granted an exemption for 5% of the subject properties 1995 real estate taxes which represents the period from December 15, 1995 through December 31, 1995, during which the applicant owned the subject property and used it for charitable purposes. See generally 35 ILCS 200/9-185 (West 1996) (setting forth that where a change in ownership occurs which results in property becoming exempt, the property will be exempt only "from the date of the right of possession").

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Date

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Robert C. Rymek  
Administrative Law Judge